UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--- x
UNITED STATES OF AMERICA,   :

                 :

   -against-   :

                 :

DARIUS XAVIER JOHNSON,   :

                 :

       Defendant.   :

                 :

--- x

NOT FOR PUBLICATION

MEMORANDUM AND ORDER

15 Crim. 227 (ENV)

VITALIANO, D.J.

In the event that evidence is offered showing that Melde Rutledge had interactions with defendant in connection with any of the specific transactions that are the subject of the trial, and the defense seeks under Rule 404(b) to offer evidence of Rutledge's 1986 conviction for fraud, the following is the Court's proposed limiting instruction to the jury upon receipt of that Rule 404(b) evidence:

THE DEFENSE HAS OFFERED EVIDENCE TENDING TO SHOW THAT ON A DIFFERENT OCCASION MELDE RUTLEDGE ENGAGED IN CONDUCT SIMILAR TO THE CHARGES IN THE INDICTMENT.

IN THAT CONNECTION, LET ME REMIND YOU THAT NEITHER MELDE RUTLEDGE NOR DARIUS JOHNSON IS ON TRIAL FOR COMMITTING THIS ACT NOT ALLEGED IN THE INDICTMENT. ACCORDINGLY, YOU MAY NOT CONSIDER THIS EVIDENCE OF THE SIMILAR ACT BY MELDE RUTLEDGE AS A SUBSTITUTE FOR PROOF THAT DARIUS JOHNSON COMMITTED THE CRIMES CHARGED. NOR MAY YOU CONSIDER THIS EVIDENCE AS PROOF THAT MELDE RUTLEDGE HAS A CRIMINAL PERSONALITY OR BAD CHARACTER. THE EVIDENCE OF THE OTHER, SIMILAR ACT WAS ADMITTED FOR A MUCH MORE LIMITED PURPOSE AND YOU

1

MAY CONSIDER IT ONLY FOR THAT LIMITED PURPOSE.

IF YOU DETERMINE THAT MELDE RUTLEDGE WAS INVOLVED IN THE
COMMISSION OF ANY OF THE ACTS CHARGED IN THE INDICTMENT AND THE
SIMILAR ACTS AS WELL, THEN YOU MAY, BUT YOU NEED NOT DRAW AN
INFERENCE THAT HIS INVOLVEMENT IN THE ACTS CHARGED IN THE
INDICTMENT WAS KNOWING AND INTENTIONAL AND NOT BECAUSE OF SOME
MISTAKE, ACCIDENT OR OTHER INNOCENT REASONS.

EVIDENCE OF SIMILAR ACTS MAY NOT BE CONSIDERED BY YOU FOR ANY
OTHER PURPOSE. SPECIFICALLY, YOU MAY NOT USE THIS EVIDENCE TO
CONCLUDE THAT BECAUSE MELDE RUTLEDGE COMMITTED THE OTHER ACT HE
MUST ALSO HAVE BEEN INVOLVED IN THE COMMISSION OF THE ACTS CHARGED
IN THE INDICTMENT.

Dated: Brooklyn, New York
October 4, 2016

/ENV

ERIC N. VITALIANO
United States District Judge

2